

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Sean M. Murray,

Debtor.

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Sean M. Murray,

Plaintiff,

-against-

John and Jane Doe Corporations and Entities,
Specialized Loan Servicing, LLC and Nationstar
Mortgage LLC, d/b/a Mr. Cooper, as Servicing
Agents for Federal Home Loan mortgage
Corporation,

Defendants.
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Case No 17-44157-ess

Chapter 7

Adv. Pro. No. 18-01141-ess

**NATIONSTAR MORTGAGE LLC RESPONSE TO PLAINTIFF
MOTION FOR LEAVE TO APPEAL OR AMENDED COMPLAINT**

Nationstar Mortgage LLC, d/b/a Mr. Cooper (“NSM”), by and through its undersigned attorney, hereby responds to the motion of Plaintiff, Sean M. Murray (“Murray”) for leave to appeal or amend the complaint (ECF No. 53) (the “Motion”), and in support thereof states as follows.

1. NSM refers to the Reply of Fay Servicing, LLC (successor servicer to SLS) in Response to Plaintiff’s Motion for Leave to Amend or Appeal (ECF No. 74) (the “Fay Reply”) and adopts the statement of facts set forth in paragraphs 1 through 12 in the Fay Reply and the use of the defined terms therein.

2. NSM does not object to Murray's request for leave to appeal from the Summary Judgment Order, and therefore does not oppose the motion to the extent of such relief sought.
3. NSM does oppose the leg of the Motion that seeks permission for Murray to amend the complaint filed in this adversary proceeding.
4. Though the rules of procedure do allow for amendment of pleadings after the initial 21-day period (see, FRBP 7015 [FRCP 15]), the moving party's purpose and motive is to be scrutinized, and a request denied if undue delay, bad faith, dilatory motive, repeated failure to properly amend previously, undue prejudice and futility are found. *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1963).
5. This adversary proceeding was commenced in 2018. The defendant parties long ago answered, and there has been extensive motion practice by SLS for summary judgment which the Court granted. There has also been discovery taken and responded to. Now, with the loss suffered in the Court's granting of the SLS summary judgment motion, Murray now seeks to expand the adversary proceeding, and possibly to "save" it by seeking to amend the complaint.
6. This activity by Murray meets at least several of the factors that are considered in a denial of a motion to amend. Dilatory activity, bad faith, prior opportunity to amend, undue prejudice to defendants and undue delay in seeking to amend.
7. As is stated in the Fay Reply, Murray has a further burden in this case, with the summary judgment granted, Murray first must establish that the "judgment" should be vacated. So, at a minimum, the appeal that Murray seeks to prosecute, and which Fay and NSM do not oppose, would have to proceed, and Murray would have to be successful in the appeal

before a motion to amend should even be considered. NSM respectfully refers to the case support for this position set out in the Fay Reply.

8. As Murray does not articulate what the amendments to the complaint would be, what additional causes of action would be asserted and what is the reason for the very late attempt to so amend in an almost three year old adversary proceeding, NSM contends that Murray has woefully failed to establish any basis recognizable in support of a right to amend under FRBP 7015.

WHEREFORE, Secured Creditor respectfully requests this Honorable Court deny the Plaintiff's motion as to the request to amend, and determine the leg of the motion that seeks leave to appeal, and provide for such other and further relief as the Court deems just and proper.

Dated: March 2, 2021
Westbury, NY

Robertson, Anschutz, Schneid, Crane & Partners,
PLLC
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By: /s/ Kevin R. Toole
Kevin R. Toole, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 2, 2021, I caused to be electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and a true and correct copy has been served via CM/ECF or United States Mail to the following parties:

Sean M. Murray
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Richard J. McCord, Trustee
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Dated: March 2, 2021
Westbury, New York

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